

(2017) 12 GAU CK 0048
In the Gauhati High Court
Case No : 411 (AP) of 2016

M/S Haji Enterprises

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 12-12-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2017) 12 GAU CK 0048

Hon'ble Judges : Hitesh Kumar Sarma

Bench : SINGLE BENCH

Advocate : Dilip Mazumdar, K Tari, G Kato, TJ Dogum, T Don, D Bagra, G Riba, Marto Kato, PK Roy, P Tappo, SK Chakraborty

Judgement

1. In exercise of its writ jurisdiction, under Article 226 of the Constitution of India, this Court is called upon to exercise its power of judicial review towards setting aside the contract awarded in favour of respondent Nos. 6 and 7 in respect of the work in question.

2. This writ petition has been filed by the petitioner, which deals in the business of carriage contract under the FCI, the respondent Nos. 2 to 5. The respondent No. 1 is the Union of India and the respondent Nos. 6 and 7 are the private respondents.

3. The fact, in a narrow compass, is that on 09-11-2015, the FCI floated a Notice Inviting Tender from the eligible bidders for appointment as contractors on regular basis for two years" period. Being eligible, the petitioner submitted two different bids, one is for an estimated work of Rs. 10,16,43,030/- for transportation of foodgrains/allied materials etc. "Ex-Rly. siding Harmutty/FSD Banderdewa to FCI FSD Pasighat, AP via weighbridge" and the other bid for an estimated work of Rs. 6,20,17,575/- for transportation of Foodgrains/allied materials etc. "Ex-Rly. siding Harmutty/FSD Banderdewa to FCI FSD Daporijo, AP via weighbridge". The petitioner became the successful tenderer. Accordingly, it

was awarded the contract for allotment of the said works. Thereafter, Bank Guarantees were executed vide BG No. 2974IGPER000216, dated 09-02-2016, valid upto 08-08-2018 for the Pasighat work and BG No. 2974IGPER000116, dated 09-02-2016, valid upto 08-08-2018 for the Daporijo work. The petitioner also furnished security deposits for a sum of Rs. 50,82,155/- for Pasighat work and Rs. 31,00,880/- for the Daporijo work. The petitioner was, thus, appointed by the Regional Office of FCI, Itanagar, Arunachal Pradesh, for the works aforementioned, vide communication No. FCI/Cont./RTC/HMY-BND-PSG/APR/15, dated 02-03-2016 for Pasighat works and Communication No. FCI/Cont./RTC/HMY-BND-DPJ/APR/15, dated 02-03-2016, for Daporijo works. It is contended by the petitioner that huge investments for the purpose of the contract works has been made by him.

4. It is contended that the Regional Office of FCI, Assam, vide NIT, dated 08-01-2016, issued bids for appointment of transport carriage contractors on regular basis for a period of 2 years. The said NIT provided for appointment of the carriage contractor for the same routes, i.e., the routes of Pasighat and Daporijo. The FCI segregated the parties of the same routes into different categories, i.e (1) for Ex.Railway Siding North Lakhimpur/FSD North Lakhimpur to FCI FSD Daporijo via weighbridge, (2) for Ex.Railway Siding North Lakhimpur/FSD North Lakhimpur to FCI FSD Pasighat via weighbridge, (3) for Ex.Railway Siding Dhemaji/FSD Dhemaji to FCI FSD Daporijo via weighbridge and (4) for Ex.Railway Siding Dhemaji/FSD Dhemaji to FCI FSD Pasighat via weighbridge. According to the petitioner, the same work/route having already been allotted in its favour by the Regional Office of FCI, Itanagar, Arunachal Pradesh, a further tender process could not have been initiated for the same work/route.

5. It is also the contention of the petitioner that though the allotment for the contract works, for 2 years, was made in favour of it by the Regional Office of FCI, Itanagar, yet two new firms, i.e., respondent Nos. 6, M/S Purbanchal Communication Pvt. Ltd. and 7, M/S BBR Enterprises, were appointed for the aforementioned works for a period of said two years", overlapping the period for which it was appointed.

6. I have heard Mr. Dilip Mazumdar, learned senior counsel for the petitioner and Mr. PK Roy, learned counsel, appearing on behalf of respondent Nos. 2 to 5. I have also heard Mr. Marto Kato, learned Central Government Counsel, for respondent No. 1. The respondent Nos. 6 and 7 did not contest the proceeding.

7. Before coming to the issues involved and the arguments preferred by the learned counsel for the parties, the works tendered and allotted to the petitioner, vide communication, dated 02-03-2016 and the works tendered and allotted to the respondent Nos. 6 and 7 and others are indicated below in a tabular form for the sake of convenience of discussion. Details of works allotted to the petitioner, against the NIT, dated 09-11-2015, floated by FCI Regional Office, Itanagar :

Sl. No.

E-Tender No.

Name of Works

Estimated value of contract (VOC)

1.

FCI/Cont./Rglr.HMY/RO/APR/2015, Dated 09-11-2015.

Transportation of foodgrains/allied materials etc. from Ex-Rly. Siding Harmutty/
FSD Banderdewa to FCI FSD Pasighat, AP via weighbridge

Rs. 10,16,43,030/-

2.

FCI/Cont./Rglr.HMY/RO/APR/2015, Dated 09-11-2015.

Transportation of foodgrains/allied materials etc. from Ex-Rly. Siding Harmutty/
FSD Banderdewa to FCI FSD Daporijo, AP via weighbridge.

Rs. 6,20,17,575/-

Details of works allotted to the respondent Nos. 6 and 7, against the NIT, dated
08-01-2016, floated by the FCI Regional Office of FCI, Assam:

Sl. No.

E-Tender No.

Name of Works

Estimated value of contracts

1.

S&C/1751/AP/Assam/2015/01

*1. Ex.Railway Sliding North Lakhimpur/FSD North Lakhimpur to FCI FSD Ziro via
weighbridge. (Distance 133 kms)

Rs. 1,50,00,000/-

2.

S&C/1751/AP/Assam/2015/02

*2. Ex.Railway Sliding North Lakhimpur/FSD North Lakhimpur to FCI FSD
Daporijo via weighbridge. (Distance 321 kms)

Rs. 77,00,000/-

3.

S&C/1751/AP/Assam/2015/03

*3. Ex.Railway Sliding North Lakhimpur/FSD North Lakhimpur to FCI FSD Pasighat via weighbridge. (Distance 204 kms)

Rs. 87,00,000/-

4.

S&C/1751/AP/Assam/2015/04

*4. Ex.Railway Sliding Dhemaji/FSD Dhemaji to FCI FSD Daporijo via weighbridge. (Distance 259 kms)

Rs. 1,00,80,000/-

5.

S&C/1751/AP/Assam/2015/05

*5. Ex.Railway Sliding Dhemaji/FSD Dhemaji to FCI FSD Pasighat via weighbridge. (Distance 142 kms)

Rs. 1,00,80,000/-

8. The learned counsel for the petitioner has argued that although the projected areas are different in the NIT, dated 08-01-2016, but the targeted district headquarters are same with that of NIT dated 09-11-2016, issued by the Itanagar Office. The contemplated action of the respondent authorities, specifically the FCI Regional Office, Assam, if allowed to fructify, has the net effect frustrating the subsisting contract of the petitioner with FCI Regional Office, Itanagar, Arunachal Pradesh and if in accordance with the NIT dated 08-01-2016, a new contractor is appointed for such carriage contract, in the same route and to the said targeted district headquarter, i.e., Pasighat and Daporijo, it will amount to revocation of the transportation works allotted to, and undertaken by the petitioner, vide the communication, dated 02-03-2016. Such an action will amount to usurping upon the accrued business rights and interest of the petitioner.

9. The further submission of the learned counsel for the petitioner is that there is no shortage of PDS supplies in Arunachal Pradesh that would have otherwise required the FCI to take extraordinary steps of appointing more contractors for meeting the excess demand of PDS supplies. Therefore, according to the learned counsel for the petitioner there was no occasion arose for floating the NIT, dated 08-01-2016 covering the same routes.

10. It is also submitted by the learned senior counsel for the petitioner that the routes mentioned in the subsequent NIT, dated 08-01-2016, covers lesser distance to its targeted district headquarters, especially Pasighat and Daporijo. According to him, such a development is not an overnight development, but is contemplation since long. In such a situation, the FCI authorities ought not to have appointed the petitioner for carriage contract. He has stressed upon this fact to indicate that the FCI Assam Region floated the NIT, dated 08-01-2016, to

favour the private respondents.

11. It is also argued by the learned senior counsel for the petitioner that the instrumentality of the State are required to act in a responsible manner and should be fair in its treatment. The petitioner was promised, while appointed as carriage contractor for a period of 2 years for the routes for which he was appointed by NIT, dated 09-11-2015 for works of the estimated value of Rs. 10,16,43,030/-, for Pasighat and Rs. 6,20,17,575/- for Deporijo. Therefore, the Assam FCI has altered this position by the NIT, dated 08-01-2016, and consequently making allotment of work to respondent Nos. 6 & 7 and others in the same routes. Accordingly, the action of the FCI is blatantly in violation of the principle of promissory estoppel and legitimate expectation of the petitioner. It is also said to be discriminatory.

12. In the backdrop of the facts narrated in the petition, as indicated above, and the arguments advanced by the learned senior counsel for the petitioner, the petitioner has sought for a direction for quashing the NIT, dated 08-01-2016 and the appointment order of respondent 6 and 7, dated 04-07-2016 with a further direction to the respondent Nos. 1 to 5 to continue with the work orders made in favour of the petitioner vide communication dated 02-03-2016. In the alternative, it is prayed to compensate the petitioner for reduction of the working areas than mentioned in the NIT, dated 09-11-2015.

13. Let us, now, turn to the affidavit-in-opposition filed by the respondent Nos. 2 to 5. While denying the statements made by the petitioner in his petition alleging discriminatory treatment in issuing the NIT, dated 08-01-2016 and consequent work orders to the respondent Nos. 6 and 7, being violative of the rights guaranteed under the Constitution of India, the said respondents have contended thus in paragraph No. 4 of the affidavit-in-opposition as follows: "That, with regard to the statements made in paragraph 5, 6, 7, 8 and 9 of the writ petition, the deponent denies and disputes the same, save and except those which are borne by the records. It is in this regard stated that the transportation contract, under which the petitioner was appointed, has neither been suspended, nor been cancelled by the FCI. It is stated that pursuant to NIT dated 09.11.2015, floated by the FCI Arunachal Pradesh Region, the petitioner was appointed as a transport contractor, for transportation foodgrains for the two routes i.e. from (1) Railway siding Harmutti to FCI, Food Storage Depot, Pasighat (215 km) and (2) from Railway siding Harmutti to FCI, Food Storage Depot Daporijo (356 km). But the subsequent NIT dated 08.01.2016, were floated by the FCI, Assam Region, pursuant to which private respondent No. 6 and 7 were appointed, was in respect of 5 routes, including (1) Railway siding Dhemaji to FCI to FCI FSD, Daporijo (259 kms) and (2) Railway siding North Lakhimpur to FCI FSD Pasighat (204 kms) which is put to challenge by the petitioner in the writ petition in WP(C) No. 411 (AP) of 2016. I submit that the petitioner still remains to be the transport contractor for the routes, for which he was appointed. It fact, the petitioner has been continuing with the contractual work and has been allotted work for

transportation of foodgrains in the month of February 2017 and March 2017. The petitioner would be always directed to carry foodgrains as per the requirements of the FCI, under the terms of the contract. In this regards, it may be pertinent to mention here that, under the terms and conditions, governing of the contract, (Clause XVI), the Food Corporation of India does not guarantee any definite volume of work or any particular pattern of service, at any time of throughout the period of contract and the Corporation, under the contract, also possesses exclusive right, to appoint one or more contractors for any or all of the services and also can divide the work between the contractors, in any manner, the Corporation may decide and no claim shall be made against the Corporation by reason of such division of work. Clause XVI of the contract (MTF) provides as under :

"VI. Volume of work

(a) Subject as hereinafter mentioned, the Corporation does not guarantee any definite volume of work or any particular pattern of service, at any time, or throughout the period of the Contract. The mere mention of any item of work in this Contract does not by itself confer a right and/or confirm any right to the Contractor to demand that the work relating to all or any item thereof should necessarily or exclusively be entrusted to him.

(b) The Corporation have the exclusive right to appoint one or more Contractors for any or all the services and to divide the work between such Contractors in any manner that the Corporation may decide and no claim shall lie against the Corporation by reason of such division of work.

(c) -----"

The petitioner, has entered into the contract, by working and understanding this contractual terms very well. It is therefore, categorically denied that the transportation contract, made by the FCI, Assam Region, following NIT dated 08.01.2016, interferes with the works already settled with the petition firm, as alleged. The allegation made by the petitioner that M/s Purbanchal Communication Private Limited and M/s BBR Enterprises, are constantly pressing the petitioner firm to vacate the work place as immediately as possible by saying that their firm has succeeded to obtain the said work from the FCI, Regional Office, Assam etc, has no basis and hence the said statements are denied by the deponent. The further allegation that the subsequent NIT, if allowed to fructify, has the net effect of frustrating the subsisting contract of the petitioner firm and that it will have the effect of annihilating the transportation work completely from the petitioner and is usurping the accrued business right and interest of the petitioner, as alleged, has no basis and hence denied emphatically. It is reiterated that under the terms of the contract, under which the petitioner was appointed, the FCI, as a party to the contract, has the absolute right to appoint one or more contractors even, for the same work for which the petitioner - contractor, was appointed and can even divide the work between the contractors. The allegation

made by the petitioner therefore, is contrary to the terms of the contract. It is further stated that the right of the FCI to appoint a contractor or an additional/parallel contractor in respect of a route, being an absolute right, is not dependent upon any situation of shortage of PDS supplies. The point sought to be made-out by the petitioner in this regard, therefore, has no basis."

14. It is further averred in the affidavit-in-opposition that in terms of contract under which the petitioner was appointed, the FCI as a party to the contract has the absolute right to appoint one or more contractors even for the same work, for which the petitioner contractor was appointed and even can divide the work given to the contractors. As such, the allegation of the petitioner is contrary to the terms and condition of the contract. It is further averred that the right of the FCI to appoint a contractor by additional/parallel contractor in respect of a route, being an absolute right, is not dependent upon shortage of PDS supply. It has been further averred in the affidavit-in-opposition that the contract, in relation to which the petitioner is appointed, does not guarantee any volume of work and that the petitioner was appointed for transportation of food grains between Harmutty to Pasighat and Daporijo, covering road distance of 215 km and 356 kms respectively, but the subsequent contract from North Lakhimpur to Daporijo and to Pasighat, covers lesser distance of 204 kms and 321 kms respectively and as such the operational expenditure for the subsequent contract is cheaper. It is submitted that for proper balancing of the above competing interest, the Court is requested to look into the public interest, above the individual/private interest.

15. The plea of the petitioner that none except him should be allowed to carry out the entire carriage work, is not only against the terms and conditions of the contract, but also against public interest. It has been asserted in the affidavit-in-opposition that the contract work allotted to the petitioner has neither been suspended nor cancelled and he will be issued with necessary movement order depending upon the placement of Railway wagon carrying food grains as per requirement of the FCI.

16. The further statement made in the affidavit-in-opposition is that due to "gauge conversion work" between North Lakhimpur to Murkongselek and between Balipara to Bhalukpong, initiated by the NF Railway, the operation at the Railway siding at North Lakhimpur was completely stopped for more than 2 years and on receipt of information from the NF Railway about the completion of the gauge conversion work in North Lakhimpur including construction of goods shed there, the FCI Assam region initiated the process for appointment of transport contractors, ex-North Lakhimpur, ex-Dhemaji etc. to various PDCs/Depots in various routes. It is also specifically denied that the FCI, while floating the NIT, dated 09-11-2015, promised the petitioner being appointed as regular contractor for 2 years, with an estimated value of contract of Rs. 10,16,43,030/- for Pasighat and Rs. 6,20,17,575/- for Daporijo. It is further submitted in the affidavit that as per the terms of the contract, the petitioner could have represented before the Grievance Redressal Forum in the FCI Zonal Office

against any action touching upon the contract, which the petitioner did not do.

17. I have carefully considered the rival submission and have also perused the entire materials on record in respect of the the alleged promissory estoppels, it is revealed from the materials on record that the volume of work in terms of financial involvement was worked out by the FCI and mentioned in the tender, does not necessarily mean a promise of allotment of work to the extent of the amount assessed in terms of the financial involvement; rather, such a plea is barred by the provision of the clauses of the contract agreement referred to above. Therefore, the argument of promissory estoppels canvassed by the petitioner fails.

18. The respondent Nos. 2 to 5, in accordance with the direction of the Court, in the connected contempt petition, to file supplementary affidavit, has filed the same in the contempt proceeding, and the same has been brought on record in this writ petition for effective adjudication of the matter. It is stated in the supplementary affidavit that after completion of gauge conversion work, the NF Railway requested the FCI to place booking of rakes to various terminals, through their letter, dated 26-03-2016 and since the process of finalization of appointment of transport contractors for those sectors were being delayed, the Chief Operation Manager, NF Railway, Maligaon, vide letter 28-04-2016, issued reminder to the FCI requesting to use the said terminals for PDS requirement. In terms of the said letter, the FCI headquarter vide letter dated 17-11-2016, requested the Executive Director (Zone) FCI, Guwahati to expedite the operationalisation of remaining rail heads for food grains handling etc. In view of such position, the FCI Assam region, under which the originating stations for transportation for food grains falls, completed the tender process, initiated vide NIT 08-01-2016, and finally, appointed the private respondents for the said routes. It has also specifically stated that certain amount of work was allocated to the petitioner as per the contract and even after the interim order passed by this Court, petitioner was allotted works against the contract and as such the petitioner is continuing with the transportation contract and that its contract work was neither cancelled nor suspended.

19. Above apart, as per the policy decision of the FCI, communicated vide communication, date 14-02-2013 and following a report made by the General Manager (Region) FCI, Regional Office Arunachal Pradesh, Itanagar about some serious shortcomings with respect to the storage of infrastructure of Food Storage Depot (FSD) Banderdewa, vide his report dated 21-09-2016, the FCI Zonal Office, instructed the General Manager, FCI, Arunachal Pradesh Region, vide communication dated 27-10-2016, directing him to take up a "Zero PV" exercise at FCI FSD Banderduah, by way of a special PV on 100% liquidation of stocks. Since the said process required starting the process of stopping of induction of stocks by Railway Rake at the Railway Siding Harmutty, through which FSD Banderduah is fed, the process of issuing movement orders for carrying foodgrains Ex-Harmutty had to be stopped to make the stock level

"Zero" and as such there was no placement of rakes at Railway Siding Harmutty. According to the FCI, this process, apart from other operational reasons, resulted in stopping of allocation of work to the petitioner. It was done wholly for public interest. Apart from FSD Banderduah, instructions in the similar manner were also given for conducting "Zero PV" at FSD "Narayanpur", vide letter, dated 14-09-2016. The FCI FSD "Narayanpur" is also fed from the same Railway Siding Harmutty.

20. The petitioner submitted reply to this supplementary affidavit filed by the respondent Nos. 2 to 5. In its reply affidavit, the petitioner has submitted that so far as clause-XVI, governing the contract, in respect of "non-guarantee of any definite volume of work" and "to appoint one or more contractors for any work or all of the services and to divide the work to such contractors that the corporation may decide", the same has been wrongly interpreted by the respondents/FCI. According to it, the respondent FCI should have allotted food grains for transportation in such a manner to comply with the minimum level of requirements against the destinations matching with the previous year supply data to fulfil the work entrusted to the petitioner, vide NIT, dated 09-11-2015. In spite of the fact that the production of the food grains did not decline, the FCI authorities allotted most of the works to the private respondents and other contractors and allotted meagre amount of work to the petitioner with a view to deceive him. So far division of work is concerned, as per the relevant clause in the contract agreement; the petitioner has submitted that the same should have been specifically mentioned in the NIT, but not after the appointment of contractor of a particular route or destinations.

21. Claiming the statement of the respondent Nos. 2 to 5 that their action is to reduce the operational expenditure of food grains movement, it is submitted that the Railway siding of North Lakhimpur and Dhemaji were completed long before the NIT, dated 09-11-2015, which was notified to FCI, by the NF Railway by communication, dated 26-03-2015.

22. In the supplementary affidavit filed by respondent Nos. 2 to 5, it has been stated that vide the letter, dated 26-03-2015, the NF Railway only requested the FCI to plan for booking of racks without intimating about the commissioning of the railway goods shed. Subsequently, in April, 2016, the NF Railway communicated to the FCI, giving details of the terminals utilised and non-utilised, numbering 17, requesting the FCI to take steps.

23. The other statements made by the petitioner in the aforesaid affidavit is denied by the respondent Nos. 2 to 5.

24. To substantiate his argument, the learned senior counsel for the petitioner has referred to the decision of L.I.C. of India and another v. Consumer Education and Research Centre and others, reported in 1995 (5) SCC 482, and particularly paragraph-27 thereof. Paragraph 27 of the said decision is reproduced hereinbelow: "27. In the sphere of contractual relations the State, its

instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner i.e. fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest."

25. There is no dispute relating to the above principle. It is to be seen whether the said principle has been violated in the instant case keeping in mind that in a contractual matter and the terms and condition of the contract govern the parties. The contractual clauses, referred to above, having clearly spelt out the modalities of contractual obligation and the petitioner having accepted the same with his eyes wide open, cannot, now, turn around and allege violation of the above principle.

26. The petitioner has also referred to the decision of Daulat Sitaram Kodone and others v. State of Maharashtra and others reported in (2014) 13 SCC 341, and particularly paragraph-6 to 8 thereof. This decision relates to an unconscionable contract. The agreement involved in the said decision was held to be unconscionable and unconstitutional, being opposed to public policy.

27. Here in the instant case, the terms of contract has not been put to challenge by the petitioner; rather, the petitioner accepted the terms and condition of the contract. That apart, this Court has not found that the decision to engage some other contractors, as alleged by the petitioner, for convenience of operational expenditure, is opposed to the public policy, as has been contended by the petitioner.

28. In *Ambica Quarry Works etc. v. State of Gujrat and others* reported in AIR 1987 SC 1073 , paragraph-18, it has been observed by the Hon''ble Supreme Court that "..... the ratio of any decision must be understood in the background of facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it." The decisions of the Hon''ble Supreme Court, referred to by the learned senior counsel for the petitioner, do not appear to be applicable in the factual background of the present case.

29. The learned counsel for the petitioner has also referred to the decision of *DLF Universal Ltd. & Anr. v. Director T. & C. Planning Haryana & Ors.*, reported in 2010 (14) SCC 1 and specifically paragraphs-13 and 15 thereof. This case relates to direction issued to licensee to amend the clause, but the case at hand is not the same and as such, this decision does not have any application to the case in hand.

30. The learned counsel for the petitioner has also referred to the decision of the

Hon"ble Supreme Court in the case of Tata Cellular v. Union of India, reported in 1994 (6) SCC 651. There cannot be any dispute as regards the principle enunciated by the Hon"ble Apex Court in matters of judicial review, under Article 226 of the Constitution of India. It is undisputedly a settled position of law that not the decision, but the decision making process can be interfered with by way of judicial review.

31. Now, we have to see whether the decision making process, in the instant case, is based on subjective satisfaction and devoid of reason and justification, as has been contended by the learned senior counsel for the petitioner.

32. The learned counsel for the FCI, respondent Nos. 2 to 5, has referred to the provisions of Clause-XVI of the contract agreement, particularly, Clause-(a) and (b) thereof, which have also been quoted in the affidavit-in-opposition. The further submission of the learned counsel for the FCI is that in Sub-Clause (b) of Clause-XX of the contract agreement, the provision has been made for redressal of grievances, which reads as follows: "XX. Law Governing the Contract & Dispute resolution

(a) The Contract will be governed by the Laws of India for the time being in force.

(b) In case of any disputes arising out of and touching upon the contract, the same will be first referred to the Dispute/Grievance Redressal Committee constituted and functioning at the Zonal Office of the Corporation, with a view to settle the disputes. If any disputes remain thereafter, the same will be settled in the Court of Law having competent jurisdiction."

Referring to this provision, the learned counsel for the respondents/FCI has submitted that the petitioner instead of resorting to that provision filed the instant petition. The learned senior counsel for the petitioner referring to the relevant statement in the writ petition submitted that the petitioner filed a petition before the competent authority of the FCI although without waiting for the response, filed this writ petition before this Court considering the urgency of the matter as the term of contract is expiring soon. In view of the decision that would follow, in the considered view of this Court, decision on this issue would be redundant.

33. The learned counsel for the FCI has also referred to the decision of the Division Bench of this Court in Writ Appeal No. 138 of 2000 (Charles N. Lyngdoh of Mawkyrwat v. Sri M. Nongsiej and others) wherein a similar situation was dealt with. In the said case, the Food Corporation of India floated an NIT, dated 06-03-1999, from experienced contractors with strong financial background for appointment of Handling/Transport contractors for transportation of foodgrains/sugar etc from Railhead/FSD at Guwahati/Khanapara to FSD Jowai for two years. The writ petitioner/respondent No. 1 submitted his tender along with others and he was allotted with the contract, vide order, dated 08-06-1999. During the course of the contract, the FCI made an offer to the respondent No. 4/appellant for appointment as contractor for transportation of foodgrains etc., at the

accepted rate of 110% above the schedule rate for the remaining period of the contract. The petitioner/respondent No. 1, being apprehensive of division of the volume of works allotted to him, approached the Court seeking directions restraining the respondent Nos. 1 and 2 from bifurcating the work.

34. Referring to the Clause (C) of the contract agreement, the Hon'ble Division Bench of this Court held that as per the terms of the contract, the Corporation reserved the right to appoint one or more contractors at any time, namely, at the time of award of the contract and/or during the tenure of the contract, for any of the services mentioned therein, and to divide the work as the Corporation may think fit and proper.

35. Further in the same decision rendered by the Hon'ble Division Bench, referring the Clause-XVI of the contract agreement, it was held that the Corporation has the power to bifurcate and divide the work and to appoint additional contractor.

36. That apart, another decision of another Division Bench of this Court, vide order, dated 22-03-2016, passed in Writ Appeal No. 108/2016, has been referred to by the learned counsel for the FCI/respondent. In this decision, a similar situation has been dealt with by the Hon'ble Division Bench of this Court. The relevant portion of the said order is reproduced below: "The appellant is entrusted with the carriage contract work of the FCI Respondent in terms of the NIT dated 01.07.2015. As per Work Order issued on 14.09.2015 and also on 14.10.2013, it was required to transport food-grains from FCI Siding Changsari at Shillong to Nongstain and Khanapara respectively. Contrary to the said Work Order the FCI Authorities issued a fresh NIT on 29.02.2016 inviting tender for transporting grains from New Guwahati FCI Siding to the aforesaid three destinations, which prompted the appellant to challenge the fresh NIT by filing the writ petition. The basic contentions of the learned Senior Counsel for the appellant is that the value of the entrusted work was determined through a formula on assessment of the total quantity of the work and the prevalent market rate and accordingly if new transporters are engaged to carry the goods from New Guwahati FCI Siding in terms of the impugned NIT, the interests of the present operators carrying goods from Changsari Siding would be adversely affected as transporters would be carrying the foodgrains to the same destination i.e. Shillong, Nongstain and Khanapara.

The learned standing Counsel for FCI, however, submits that the FCI has to target optimum efficiency in operation of the carriage from New Guwahati FCI Siding in addition to the Changsari Station, which cannot be challenged by transporters. According the learned Standing Counsel, it is in the large public interest that the impugned NIT was issued without affecting the appellant. In our opinion, the appeal can be disposed of by observing that notwithstanding the NIT dated 29.02.2016, the rights of the appellant to transport the foodgrains as per the work orders issued to it for a period of 2 years pursuant to the NIT dated 01.07.2015 as has been continued by it heretofore shall not be disturbed in any

manner."

37. In the instant case also, in the affidavit-in-opposition filed by the respondent Nos. 2 to 5 and also during the course of argument by the learned counsel for the respondent/FCI, it is submitted that not only the contract, awarded to the present petitioner is not cancelled, but it was also entrusted to do the works as specifically mentioned in the affidavit and they will continue to allot works to the petitioner.

38. Both the decisions of the Hon"ble Division Bench, referred to above, appears to be applicable in the facts and circumstances of the case at hand.

39. Learned counsel for respondent/FCI has referred to paragraphs-19, 20, 22, 23 and 25 of the decision of Rajasthan State Industrial Development and Investment Corporation and another v. Diamond & Gem Development Corporation Limited and another, reported in (2013) 5 SCC 470. For convenience, paragraph-23 of the said decision is reproduced below: "23. A party cannot claim anything more than what is covered by the terms of contract, for the reason that contract is a transaction between the two parties and has been entered into with open eyes and understanding the nature of contract. Thus, contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meanings unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the Court to make a new contract, however reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely."

40. In paragraph-22 of the said judgment, it has been held that public policy; public interest and public good are also to be looked into while exercising the discretion of issuing the writ of mandamus.

41. In the instant case, as indicated above, the clauses of the contract agreement referred to above, are more than clear that the FCI has the power and authority to engage more than one contractor for the same work and even to appoint additional contractors. The action of the FCI in appointing respondent Nos. 6 & 7 and others to carry out the business of foodgrains to the same destination is not inconsistent with the terms and conditions of the contract agreement. That apart, as has been specifically stated in the supplementary affidavit-in-opposition by the respondent Nos. 2 to 5/FCI that the difference of distance between Ex-Harmutty to Daporijo and Pasighat and Ex-North Lakhimpur and Ex-Dhemaji to Pasighat and Daporijo being huge, the operational expenditure for transportation of foodgrains from North Lakhimpur and Dhemaji, would be much cheaper. The FCI, as public authority, is duty bound to go for cheaper expenditure, to safeguard public interest. However, the petitioner's

transportation work would continue and the quantum of work may increase in future.

42. Above being the position, it appears that in conformity with the decisions, referred to above, the FCI has considered the operational expenditure so that no loss is caused to public exchequer and this appears to be in the public interest.

43. As far as the argument in respect of the decision to allot work to other contractors vide the NIT, dated 08-01-2016, is concerned, process of decision was initiated by the FCI and the decision was the result of many factors as stated in paragraphs-5 and 6 of the supplementary affidavit-in-opposition. Paragraphs-5 and 6 are extracted below: "5. in terms of the policy decision taken by the FCI at FCI HQ New Delhi, undertakes a process, called "Zero PV" on regular intervals. By the said process of "Zero PV", 100% liquidation of stocks for making "Zero Stock Level" in some selected depots, are undertaken by every FCI region on periodical basis, to arrive at the actual stock holding and resulted loss, by making the stock level "Zero" in such selected depots. This process involves restricting or stopping induction of stocks into the said selected depots proposed to go under "Zero PV" process.

6. Pursuant to the above policy decision taken by the FCI Headquarter, as communicated by the FCI HQ, vide communication dated 14-02-2013 and following a report made by the General Manager (Region) FCI, Regional Office, Arunachal Pradesh Region, Itanagar, about some serious shortcomings with respect to the storage infrastructure of Food Storage Depot (FSD), Banderduah, vide his report dated 21-09-2016, the FCI Zonal Office, instructed the General Manager, FCI, AP Region, vide communication dated 27-10-2016, directing him to take up a "Zero PV" exercise at FCI FSD Banderduah, by way of a special PV on 100% liquidation of stocks. Since the said process required starting the process of stopping of induction of stocks by Railway Rake at the Railway Siding Harmutty, through which FSD Banderduah is fed, the process of issuing movement orders for carrying foodgrains Ex-Harmutty, had to be stopped to make the stock level "Zero" and as such there was no placement of rakes at Rly. Siding Harmutty. This process, apart from other operational reasons, resulted in stopping of allocation of work to the petitioner. It was done wholly for public interest. Apart from FSD Banderduah, instructions in the similar manner, were also given for conducting "Zero PV" at FSD "Narayanpur", vide letter dated 14-09-2016. The FCI FSD "Narayanpur" is also fed from the same railway siding Harmutty."

44. Considering such factual background, the process of arriving at a decision by the FCI for floating the subsequent NIT covering the same routes, but a lesser distance, does not suffer from any manifest illegality and irregularity requiring interference by this Court in exercise of its power of judicial review under Article 226 of the Constitution of India.

45. In view of above, the writ petition is found to be devoid of merit.

46. Accordingly, this writ petition is dismissed. No order as to costs.

47. The interim order passed on 02-08-2016, stands vacated.